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Agricultural Experiment Station
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MARKETING AGREEMENTS AND ORDERS FOR FRUITS AND VEGETABLES

by

George L. Mehren

November, 1949

Contribution from the
Giannini Foundation of Agricultural Economics
Mimeographed Report No. 99

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Marketing Agreements and Orders for Fruits and Vegetables

George L. Mehren[1/]

Foreword.--This report has two purposes: (1) to indicate the needs, the benefits and the burdens of using federal marketing agreements and orders; and (2) to describe the federal law and the programs through which agreements and orders are operated. A marketing agreement is a contract between the Secretary of Agriculture and handlers of any farm product binding all who sign it to abide by its terms. Orders are instruments which require all handlers, whether or not they have signed an agreement, to market fruits and vegetables in accordance with their provisions. All agreement or order programs can be classified under one of two headings: (1) limitation means sale by the industry of less than the available merchantable supply in any outlet or time period; and (2) regulation means controlling the flow of the product through the season or among various outlets. Both are undertaken for the benefit of the whole industry. Both involve giving up the right to make some of the merchandising decisions normally made by the individual grower or shipper for his own benefit. Properly used, both can be helpful to growers faced with certain specific problems with little or no damage to other groups.

In either limitation or regulation programs, an Administrative Committee representing the whole industry and motivated by the benefit of the whole industry, recommends to the Secretary of Agriculture the amounts and distribution of the product to be sold and the allotment of sales rights among handlers. All shippers in the industry must abide by these decisions once they have been approved by the Secretary. No program can be effectuated and no power can be given to the Administrative Committee without the approval of a large majority of growers.

The problems to which agreements and orders can effectively be applied are limited. If abused, they may be damaging to consumers, processors, handlers, and especially to producers.

The reasons that agreements and orders have been needed in the fruits and vegetables industries will be defined. The background of modern programs will be sketched because their slow evolution over more than a half century has clearly indicated the uses for which they are appropriate and the requirements for effective administration.

Several terms must be used repeatedly. Proration or allotment will mean the assignment to each shipper of his prorate base--the percentage of the total permitted sales in each controlled outlet that he is permitted to make during the prorate period. Act or law will mean the Agricultural Marketing Agreement Act of 1937. Department will mean the United States Department of Agriculture. Secretary will mean the head of that Department. Solicitor will mean its chief legal officer. Administrator and Assistant Administrator will mean the officers in charge of the Production and Marketing Administration in the Department.

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The marketing of milk and its products, bees, tobacco, soybeans, and naval stores may be governed under the Act. Still other products may be governed by similar state laws in intrastate trade. We shall be concerned only with hops and with those nuts, fruits, and vegetables for which federal agreements or orders may be formulated: fruits and their products, including pecans, walnuts, almonds, and filberts, but not including fruits for freezing or canning, other than olives, and including only apples grown in Washington, Idaho, and Oregon; and vegetables, not including vegetables for freezing or canning except asparagus. Only those portions of the Act relevant to these commodities and the programs developed to regulate or limit their marketing will be considered here.

Limitation is needed in emergency seasons because with high and rigid marketing costs, an uncontrollable break in consumer buying power or an increase in yields may break grower prices and income unless marketings are adjusted; but marketings can be adjusted only if all handlers share in the burdens and benefits of limitation. Regulation is needed for a variety of reasons: (1) If a crop is very large, growers will divert from primary channels only when prices fall to the low levels of secondary uses; to hold primary prices higher than prices in secondary uses, control is essential. (2) Most handlers of fresh fruits and vegetables sell on the bases of expected prices at time of delivery and since they react alike to holding costs or expected prices, markets may easily be flooded; if an even flow of the crop is to be gotten, there must be central regulation. (3) The effects of such unintended gluts of strategic markets may spread over time and place. (4) Low grades and poor packs may bring quick profit to a few shippers but may permanently damage the market.

I. LIMITATION

Fluctuations in Demand.--Fruits and vegetables must be assembled locally in small lots from many growers, graded and sized, packed for shipment to distant terminal receivers, broken down for sale to jobbers or retailers, and broken down again by retailers for sale to consumers. Marketing is fast, complex, costly and risky. It usually takes more than half the retail dollar. A change in price of fruits or vegetables does not bring a similar change in the cost of marketing functions, which are performed for many industries and the rates for some of which are set by law. Thus, marketing costs are both high and rigid.

If buying power goes down, many low-income consumers shift to high-energy staple foods. The prices of fruits and vegetables go down fast and far and long--unless there is a simultaneous decrease in the volume of these crops put upon the market. Almost the full effect of retail-demand changes is passed back to growers as a decrease in net income. If the aggregate sales of the whole industry were limited when demand falls, price and income to growers could usually be increased. However, few individual growers control enough volume to raise price by adjusting their individual outputs alone. With fixed money costs to meet and with his family to support, the grower may be forced to sell even more in bad times in order to get a minimum needed cash income. If many growers try--as they must when acting alone--to stretch their output in depression, aggregate output goes up and both price and industry net income fall even further.

Fluctuations in Yields.--When production increases, both present buyers and new buyers with low incomes or little appetite for the good can be induced to expand or initiate purchases only by lower prices. The increase in production means a lower price for the whole output. Price will ordinarily fall by a bigger per cent than production increased. Therefore, a big crop often means lower cash receipts for growers than a small crop--unless a simultaneous rise in buyers' incomes brings new users into the markets and makes old users willing to purchase more. Growers cannot depend on such rises in buying power occurring every time yields go up.

The typical grower, acting alone, cannot and does not want to prevent extremely high yields on his own place, even if high yields for most growers raise aggregate output so much that aggregate cash income--including his own--goes down. Furthermore, weather partly determines yield per acre and cannot be controlled by anybody. Therefore, even without depression and with well-adjusted acreage, sale of the full produced crops of all growers in bumper years will usually bring lower income to growers than would sale of less than the full produced supply. The difference between the full produced supply and the volume which would bring growers a desirable income is called a "surplus."

Specialized growers must ordinarily concentrate on one or a few fruits and vegetables. A bad price break in one crop will mean a serious fall in total cash income. And the increase in sales by the individual grower--dictated by individual self-interest--may injure both him and the whole industry.

Simultaneous Demand and Yields Fluctuations.--Some nonfarm firms are big enough to raise price by cutting output. Some firms follow the same policies and all of them can actually cut down costs by curtailing output. Their plants may be shut down without damage. None of these adjustments is usually feasible in

I. LIMITATION

fruits and vegetables. The best insurance of good markets for fruits and vegetables is the maintenance of full employment, but counter-depression moves have not been entirely successful. Advertising and good merchandising can partly counter the effects of depression or heavy production, but their full effects do not appear immediately. Costs might be saved by increased production efficiency or lower prices for the things farmers buy, but good farmers do not wait until depression hits to operate with maximum efficiency and costs change very slowly.

Adjustment of the volume sold is the only way, except relief, that industry cash receipts may be stabilized fast enough to do much good in surplus years.

Why, then, does not the farmer, acting alone, achieve the same adjustment of output achieved in nonfarm industries and thereby prevent depression or bumper crops from endangering his livelihood?

Possibilities for Production Adjustment.--Farmers cannot always produce the aggregate seasonal output which would yield the highest possible aggregate net income for the whole industry. In any crop, efficient production and good weather may cause yields to rise enough above normal levels to depress average price and aggregate income. The individual grower, acting alone, cannot cut down yields, since even complete elimination of his crop alone would not decrease aggregate production enough to raise prices. Furthermore, once production begins, output can usually be cut down only by endangering the quality of the product or even the life of productive plant. In vegetables, if markets sag between planting and harvesting there is little that can be done to adjust production per acre. Departures from planned production are due mainly to chance changes in weather which are completely uncorrelated with changes in market opportunities. In tree fruits and nuts, acreage is planned according to the best long-run estimates of the average annual demand over the long commercial life of trees. The long-run average annual output may be good but there will be individual years when aggregate output is too high because of unusual yields or temporary bad markets. In such years, production per acre can be decreased only within narrow limits. Pulling trees means destroying the work of many years and foregoing gains if demand rises again in a few years. Again, annual variations in output per acre are largely outside the control of the grower and are not related to changes in demand.

Limitation of Sales or Shipments.--In products where total seasonal supply--rather than its distribution over time or among alternative outlets--mainly sets seasonal price, marketing and not production is the sole seasonal price determinant which can be adjusted effectively. However, small growers cannot raise price by any practicable decrease in their own marketings. Large shippers will not do so alone, because others would expand their sales.

Thus, in emergency years when sale of full industry production would not yield a desirable industry income because demand falls from depression or because yields go high or both, limitation--marketing less than produced output--is the only effective remedy. But marketings can be controlled only by the whole industry sharing equitably the burdens, dangers and benefits of limitation.

Nobody likes limitation programs much. They are hard to administer; it is sometimes hard to allot sales privileges equitably and when price goes up, many growers want to overship. At least four groups are affected by limitation of marketing. For each of them there are good and bad features of volume control.

Growers can get a larger immediate income than were they to suffer the full effect of depression or of abnormally large output. If oversupply is due to overexpansion of acreage, limitation may help while acreage is contracting; but if prolonged, it may make the industry worse off. The prorate base may cause inconvenience in harvesting or packing and may endanger some traditional outlets for the independent grower, although every major limitation program has provisions to prevent undue hardship on any grower or region. Growers lose power to make only one merchandising decision—the amount of their crop that shall enter the controlled channels. On the other hand, they effectively operate their own adjustment programs and they stay free of the production controls that usually must accompany subsidy or relief.

Processors, carriers and marketers get a smaller volume at about the same dollar margin and a smaller share of the consumer's dollar. On the other hand, they need not incur out-of-pocket losses, against which growers are protecting themselves. Further, the maintenance of productive capacity by growers who are in trouble through causes outside their control and not because they are inefficient may assure a long-run volume to processors, transporters and sellers.

Consumers would enjoy an immediate gain if full farm output went into consumption at low prices. They might lose as much by having to help support farmers who suffered losses or bankruptcy through no fault of their own. In future years, consumers might suffer from low output and high prices if men were driven from farming and if trees and vines died out. Destruction of farm capital as a result of short-run emergencies is costly to everybody. If limitation is undertaken because yields are abnormally high, consumers pay only the same prices they would pay if growers could precisely control aggregate output as do other industries. No monopoly price or profit need be involved. The general welfare of consumers is the real criterion by which to judge any program. But both the production and marketing characteristics of agriculture are unique and farm prosperity is a significant phase of general welfare.

Government helps farm industries to meet economic crises without subsidy by permitting them to combine and to limit or to regulate sales. Farm industries thereby lose some, but by no means all, of their competitive character. Competition in production efficiency, in buying supplies, in packing, packaging, branding or advertising is not diminished in any way. On the other side, the only alternative to industry self-help in emergencies is subsidy by government which, because the Treasury is more limited than the capacity of agriculture to expand, must ultimately mean extensive control by government over production or sale.

Limitation in itself is neither good nor bad. Certainly, growers must know its dangers. With overexpanded acreage, limitation may ease the harshness of general bankruptcy but it may also slow or prevent the withdrawal of acreage which is the single real cure. High prices from monopolistic use of limitation may drive consumers to other goods and may induce expanded acreage of either the controlled product or its close substitutes. Limitation is no cure-all and it is no toy. Badly used, it is dangerous to all groups and especially to growers. Applied to emergencies from depression or high yields or both, it can sustain growers without serious or lasting harm to other groups. It must not be used as a monopoly. It must not be used to prevent the necessary shrinking of an overexpanded industry.

II. REGULATION

Controlled Distribution Among Alternative Outlets.--Any produced crop can be sold in variable proportions among different outlets--fresh, dried, canned, frozen or otherwise processed, by-products--to different kinds of users in different places or times. In each outlet, the proportions of grades, sizes and varieties can usually be varied.

What is the "best" distribution of a produced crop among all outlets? What must shippers do to get the best distribution?

Distribution by individuals acting alone tends to equalize net field prices--the retail price minus the average costs per package of harvesting, packing, shipping and selling--in all outlets. Usually--and always in surplus years--to get the highest net income to the industry, the field prices realized from alternative outlets should be different. For example, the field price from high quality packs--where a small increase in sales would cause a big decrease in price--should be higher than the field price realized from the same product sold in cheap packs to low-income consumers who would change their consumption significantly with relatively small changes in price. Fresh sale should bring a higher tree price than dried outlets or by-products or processing. The test is whether transferring a small amount from Outlet A to Outlet B will cut down aggregate net industry income more in Outlet A than is added in Outlet B. When a small change in the volume sold in any outlet has the same effect on net industry income, the highest possible net industry income has been gotten. Equal prices in all markets will almost never result in highest possible industry income. Yet acting alone, each shipper will assume that his shipments will not depress the price from any outlet. He will try to sell his whole output in the market where field price is highest. Field prices will fall in the higher-priced markets as volume increases, and they will continue to fall until they are no higher than by-products or secondary market prices.

Only by working together, by adjusting relative sales in the various channels to get the required differentials, by giving equal access to all markets by all growers and by preventing individual efforts to capitalize on price differentials can any industry get the best allocation of sales. This is a continuous opportunity for benefit which can be achieved without limitation, long used by cooperatives. It cannot be achieved where growers market alone. Handlers of nuts and dried fruits have developed surplus control programs along these lines.

Price Expectations, Holding Costs and Time in Transit.--When cars leave shipping points, handlers must estimate the probable price which will be received when the cars are sold at terminal markets as much as ten days later. There is always risk of a market change in the transit period and no regulation or any other device can eliminate it. There are, however, other reasons that the realized terminal price at time of sale may be less than the expected price which induced shippers to start the car--and some of these can be controlled by means of industry collaboration.

A handler will ship if the expected terminal price exceeds the average cost of getting the product from the field to the terminal because any excess will at least contribute something towards paying his production costs. Without collaboration, fruits and vegetables will remain unsold only when the expected terminal

price will not cover harvesting and marketing costs--or where field price is reduced to zero. If sales are to be limited enough to raise field prices above zero, there must be limitation of shipments by all handlers under an enforceable order.

Every rational shipper will accelerate shipments if (1) he expects peak prices when his cars arrive at terminals; or (2) he expects heavy shipments or lower demand later in the season; or (3) he has trouble holding his product. In these cases, the market will not receive merely the negligible added shipments of one handler. All alert shippers will see and react to the same inducements to ship. The realized price will be lower than the expected price. When the margin of expected terminal price over average marketing costs is low, there will be losses to higher cost shippers and sometimes the realized price will not even cover costs of transportation. These losses occur not because shippers are inefficient, but because they operate separately in small volume and at a great distance from market. A central regulatory agency, recognizing the combined impact of small additions to shipments by many handlers, can avoid loss from these causes.

Cumulative Glutting of Markets.--If one market is flooded because all alert shippers saw an unusual market opportunity or were pressed by the maturity of their products, the damage may not be confined merely to the glutted outlet. If a given city is flooded, demand may fall and stay low until the market is cleared. The market breaks for two reasons: (1) price must go down to move the high volume of receipts; and (2) wholesalers know that the market will stay clogged for quite some time. When wholesale prices break, retailers do not drop their prices at least until they have cleared out the stock they bought before the wholesale market was flooded. Thus, the movement of produce into consumption does not speed up and the wholesale market is jammed.

The wholesaler is interested in his margin and not in the level of price. He wants stable prices or at least slowly changing prices. If a market floods, he cannot buy or hold stocks if he thinks the market may fall even further within the next few days. If this happened, other wholesalers could buy at lower prices and undersell him. He could compete only by dropping his own price to the retail trade. This means squeezing his own operating margin. In the face of actual or threatened gluts, the wholesaler will "lay off" the threatened product and other commodities. Only an agency controlling the rate of flow of all shippers could assure him against such floods, protect his margin and assure his active handling of the commodity. This is the major goal of weekly or daily regulation of shipments, and of packing or shipping holidays.

So the demand at the wholesale level is partly set by the shipments and prices in the immediate past, but even more so by the expected arrivals in the immediate future. If the industry is composed of small and separated shippers, all believing that their own small sales do not affect the market, all distant from terminals, all reacting alike to expected higher prices, or carrying costs, or all trying to escape being caught by expected heavy shipments in the future--wholesale markets can become congested without acceleration of retail sales or consumption. A wholesale glut thus cumulates over time until the market is cleared and the wholesaler is convinced the flood has subsided.

Markets in various cities are all closely interrelated. A sharp drop in one may pull down prices in tributary markets or even in other terminals. Records of this reaction go back to the beginning of the produce industries. If a fresh channel is flooded, prices in by-products or other secondary channels will often fall. If all individual shippers push some grade or size or variety--especially when an outgoing variety must be cleared out fast to make way for the incoming variety--the price may be broken. If it falls enough to induce regular buyers of other grades or sizes or varieties to shift over to the glutted market, those markets too may be affected. So gluts--for which no individual shipper can be blamed--can spread over time while the products are still in transit to terminals, over space among tributary markets, over various utilizations and among different grades, sizes and varieties.

Low Quality and Poor Packs.--Some programs prevent sale of low quality products or substandard packs. This is done because the individual shipper seeking quick profit from such sales can injure the demand for the products of the whole industry.

In summary, while seeking individual profit, intelligent shippers--acting alone in a fast-moving and risky business, where produce must move when maturity and market opportunity dictate--sometimes defeat their own ends. The small shipper will assume that he can ship his whole available supply to the highest-priced market--he is right, but everybody will aim at that outlet and its price will soon be equalized with others; he assumes that he can accelerate sales without bringing the realized price at time of sale down below the anticipated price at time of shipment--he would be right if most other shippers did not react simultaneously to the same inducements; he knows that the effects of a flooded market spread to other channels but sometimes he fails to realize that his sales are a part of the flood. He may sell very low quality or poorly packed products at an immediate profit--but he may destroy the market for better quality in doing so.

Effects of Regulation Programs.--An administrative committee working for the combined profit of the entire industry may increase industry income by: (1) defeating the tendency of the individual to sell his whole crop in the highest-priced outlet only; (2) preventing simultaneous acceleration of shipments and assuring a stable flow to market; (3) achieving the best proportions of total sales by grade, size or variety; (4) the elimination of substandard products and pack; and (5) the distribution of sales which would prevent cumulative and prolonged glutting or famines. Unfair practices may also be defined and prohibited.

Like limitation, regulation itself is neither good nor bad. Growers lose control over some, but not all, of their marketing policies but they retain complete control over production, packing, procurement and most of their sales activities. They must weigh the loss of independence against the opportunity for more orderly operation. The allotment basis which determines how total advisable shipments are divided up may require some growers and shippers to change their regular marketing methods. Processors, transporters and marketers need suffer no serious losses since volume of operations will ordinarily be increased by regulation. They and consumers must pay higher receipts to growers but they get larger volume, steadier flows and stabler prices. Government authorizes these industries, of their own volition and by methods approved in detail by growers and handlers, to conduct some phases of their selling as if the industry were one big firm. Competition in other ways is not affected. This is done because the chaos which may

come from uncoordinated sale by small and separated shippers can be costly to growers, handlers and the public. Since regulation requires combination, there must be and there are safeguards which protect handlers and the public against monopoly by growers. The goal of limitation and regulation alike is to maintain orderly distribution in industries the prosperity of which affects the public interest.

III. HISTORICAL DEVELOPMENT

Cooperative Marketing.--It is not the nature of Americans--farmers or otherwise--to work together in business. The economy has grown strong on competition. Yet the economic and natural hazards facing producers of fresh fruits and vegetables are in many ways unique. The need for cooperation in marketing, retaining active competition in production and procurement was recognized by growers long before it was sanctioned by law. Producers first cooperated in marketing in order to survive economically. Development of mechanical refrigeration and extension of railroads really developed the specialized produce industries about 1875. Until after 1890 there was little real cooperation. However, market news and outlook data could be gotten, terminal handlers could be supervised, claims could be pressed against railroads, and eastern markets could be developed for growers' benefit only if growers combined or otherwise became large enterprises. In later years, cooperatives have advertised, established and enforced grade and size regulations, standardized packing and marketing procedures, branded their products and provided other services which the individual could not do alone.

Within local associations, growers merged their outputs and sold as one unit. However, marketing cooperatives are not and were never intended exclusively or even mainly to be means to effectuate limitation or regulation. There have been two reasons that the occasional attempts have failed: (1) when prices were improved, growers or local associations have seen a chance to withdraw, to ship their full crops, to benefit from self-regulation by others and to bear none of its burdens; and (2) outsiders gained more than the cooperatives since they received higher prices and sold larger volumes besides. The cooperatives turned to industry-wide limitation or regulation contracts because no cooperative can regulate markets against the self-interest of violators within the cooperative and outside it. However, cooperative marketing provided experience in working together and it demonstrated the fatal weakness of voluntary market control.

Voluntary Marketing Agreements.--Within ten years after specialty production began, both cooperative and commercial shippers in several industries had jointly executed agreements to regulate shipments and to limit them in bumper-crop or depression years. As supplies increased and marketing became more complex, such agreements became more comprehensive and detailed. Ordinarily, an administrative committee was authorized to determine the amount and distribution of shipments, to allot these permitted sales according to some agreed and uniform basis, and to assess penalties for violation. They also protected against flooding the largest cities when market news was inadequate. They watched terminal receivers and carriers in the years before the government took over these functions. Agreements also covered train schedules, icing, standard packs and packages, branding, and even advertising. The main reason was a fast-increasing acreage which in years of high yields and low demands brought losses and which required central regulation to prevent disorderly flows to markets, especially in periods of varietal overlaps.

Two main lessons emerged in these years: (1) properly applied and administered--and supported by growers--limitation and regulation can help industries; and (2) voluntary agreements will always fail because participants will see outsiders gaining disproportionately and will withdraw on one pretext or another. Other lessons were also learned: carriers and receivers or processors will often, and logically, oppose limitation which is in the interest of the grower; programs are handicapped if they are not begun until the full force of a crisis strikes the industry; programs work best if a skeleton organization is retained at all times; production practices must not be controlled; rank and file support must be obtained; the control by local persons or organizations over local matters must not be impaired; all sales agencies must be free to increase the membership or tonnage affiliated with them; and the divergent interests of different groups must be respected.

After 1922, when the Capper-Volstead Act almost completely freed growers from antitrust prosecution for marketing agreements, modern programs much like those now in effect were developed and have operated continuously since. These modern programs demonstrated that: (1) there is little trouble in agreeing upon the best method or degree of limitation or regulation; (2) with differences in maturity dates, field life, holding conditions, traditional markets or methods among growers, regions or varieties, the real problem was equitable allotment so that all shippers could move an equal percentage of the season's shipments; and (3) in depressions especially, shippers will sign a voluntary agreement but many will violate it unless they are compelled by law to comply once they have joined.

This last lesson led to the passage of state and federal laws using the power of the government to enforce compliance once the large majority of growers freely voted to accept a control program devised in the main by themselves out of the history and the peculiar problems of their own industry.

Legislative History.--The Agricultural Adjustment Act of 1933 included, at the suggestion of western shippers, four brief sections authorizing agreements and licenses for all crops in order to formalize the voluntary programs then operating. The 1935 amendments to the Agricultural Adjustment Act specified in detail the powers, purposes and operations of market control programs under federal law. These provisions were separately re-enacted in the Agricultural Marketing Agreement Act of 1937 in order to separate them from the production-control phases of the farm program. They are constitutional, permanent methods whereby producers and handlers may combine to attack marketing problems which could not possibly be solved by individuals.

Over the last sixteen years, sixty programs have tested a variety of techniques for limitation and regulation: improved distribution of shipments; deferring shipment or sale; marketing or shipping holidays; diversion to by-products or low price markets; agreements between dealers and shippers on prices and volumes; minimum price guarantees; regulation of trade practices, charges or margins; open price posting. Regulation programs have been used continuously while limitation programs were used mainly in depression periods and with diversion programs.

IV. THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Objectives.--The Act and most parallel state laws authorize the use of agreements and orders only when through such use: (1) incomes of growers will be

raised and stabilized; (2) consumers will be protected; and (3) minimum standards of maturity, quality, grading and inspection will be maintained. Operations intended to raise prices must terminate if season average price rises over parity levels. Parity price bears the same ratio to the current index of prices paid by farmers as did the price of the crop and the index of costs in the base years. In calculating parity, all or part of the years 1919-1929 are used as a base period for most fruits and vegetables. The period 1909-1914 may also be used if necessary data are available. In practice, a price is sought which will yield reasonably high and stable returns to efficient growers, but not induce consumers to shift to substitute products or growers to expand acreage.

It must be shown in public hearings that the proposed program will contribute to the objectives of the Act. If the Secretary finds that an operating program does not so contribute, he must suspend all or part of it.

Agreements.--Marketing agreements are contracts between the Secretary and handlers of any farm product. They may contain any provisions contributing to the objectives of the Act and not in conflict with other laws. However, because shippers not signing an agreement benefit disproportionately, the Secretary will rarely sign an agreement unless there is a parallel order binding all handlers.

Orders.--Orders bind all handlers in the industry to their terms. They may be issued only for commodities enumerated in the Act. This is a permissive rather than a mandatory law. It can be used only when (1) handlers of at least one-half the volume have approved a parallel agreement on which public hearings have been held and two-thirds of producers by number or volume have approved the order; or (2) when handlers of at least half the volume have failed or refused to sign a parallel agreement, but the Secretary finds that such failure or refusal prevents gaining the goals of the Act, that the order is the only practicable means of helping growers, and that at least two-thirds of them have approved it.1/ This was done, for example, in effectuating the order for oranges grown in California and Arizona and in several orders regulating Irish potatoes. Programs may be terminated by the Secretary if he finds that the declared policy of the Act is not being effectuated or if a majority of growers petition for termination. The Secretary must find from the record of the public hearings that the order will raise or stabilize prices or maintain minimum levels of quality; that its terms are parallel to those of an agreement on which hearings have been held and that it is applied to the smallest practicable production area, with different provisions for different districts if there are differences among them in production or marketing conditions.

Authorized Terms.--Orders may include the following provisions: (1) limitation of sales by total quantity, grade, size or quality in any market or market period; (2) alloting volume of purchases or sales by handlers according to a uniform rule; (3) determining the size of a surplus in total or by any grade or size, equalizing its burden and disposing of it; (4) establishing reserve pools and equalizing the distribution of their receipts; and (5) requiring inspection for quality, maturity or size. In addition, every order must include one or more of these terms: (1) prohibiting unfair trade practices or unfair methods of competition; (2) providing for open price filing; (3) providing for selection of administrative committees and defining their duties; (4) other terms as necessary.

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There are no restrictions upon specific methods of exercising these powers. Advertising can neither be authorized nor restricted under federal law.

Commodities Covered.--Orders have regulated or limited the handling of bees, cantaloupes, cauliflower, celery, citrus fruits, California fresh deciduous tree fruits, grapes, hops, lettuce, milk, onions, peaches, pears, peas, potatoes, prunes, tomatoes, walnuts and watermelons. Some have regulated single areas while competing areas had no programs. At other times, several producing areas have had programs simultaneously. Some orders regulate just one crop. Others--like Florida citrus, California deciduous fruits and Colorado vegetables--regulate several related products, with special consideration for each commodity singly as it is regulated.

Restrictions Upon Use of Orders.--The application of orders is limited to products grown in relatively small areas where interests of growers are similar, where personal contact with committees can be maintained, where danger of a national monopoly is eliminated, where interregional equity problems are minimized and where determination of regional parity prices is facilitated. Several commodities may be included in one order if they are produced in the same area, if most growers produce more than one of them and if economy of operation can be attained. Separate regulations are issued for each product. Agreements and orders cannot be used for production adjustment.

V. ADMINISTRATION OF PROGRAMS

Administrative Committees.--Methods for selection of administrative committee members, their terms of office, powers, duties, and obligations are set out in the agreements and orders. Members are usually nominated by the industry and appointed by the Secretary. Growers dominate most committees, although handlers are represented on more than a third of them. In some programs, no one group of growers is given enough votes to control the committee. A neutral member serves on some committees for this reason. Advisory handler groups sometimes assist the growers. A large majority must favor a recommendation in order to forward it to the Secretary. There has been little difficulty in agreeing on regulations.

While the perishable nature of the products, the complexity of market organization and quick changes in market conditions make it necessary that an industry committee advise the Secretary, administrative committees do not make final decisions. They may recommend to the Secretary, on the basis of standards set out in the agreements and orders, methods of limitation, regulation or controlled distribution as authorized by the order, with each recommendation supported by reference to specific standards and by a detailed justification. Once approved by the Secretary, these recommendations have the force of law and are binding on all handlers.

Agreements and orders merely authorize the general methods of limitation, regulation or controlled distribution which may be used. The specific recommendation is made for each limitation or regulation period. It is usually provided that regulations may be changed during the period if market conditions change suddenly. Recommendations designed to raise price will not be approved after season-average price reaches parity. Regulations need not be made continuously. Committees may provide statistical information and otherwise benefit the industry in ways directly related to the operation of the agreement or order.

Marketing Policy.—Nearly every program provides for advance shipping policies which must be issued by the administrative committee before the season opens in order to permit adjustment by handlers and growers in their harvesting and packing operations. The policy statement includes estimates of total output; grade-size composition of the crop; advisable proportions of the crop to be sold; proposed grade, size and shipping schedule regulations; reasons for and probable effects of different kinds of regulations; conditions in competing industries and general economic outlook. The policy may include statement of an average price objective for the season. Whenever the committee recommends a specific regulation, it must support it with both the data and the analyses it used in reaching its decision.

Methods of Limitation and Regulation.—Several main kinds of limitation and regulation have evolved for different kinds of products and problems over the years. Most of these devices can be used both for limitation and regulation. Grade and size control is used most and rate-of-flow through parts of the season is used next most frequently. Only one of the twenty-five federal programs now effective makes no reference to grade or size or maturity or pack control. Eight also provide for rate-of-flow control on a daily, weekly, or other basis. Six provide for surplus control, one for price posting and one defines and prohibits unfair practices or methods of competition.

Shipping holidays prohibit shipments over a maximum period specified in the orders, with specified restrictions on duration, frequency or interval between holidays. This is intended to give handlers in terminal markets a chance to clear out supplies. The effect on prices cannot always be measured, since shipments may sometimes be accelerated before and after the holiday. Picking or packing operations may also be disrupted. Deciduous fruits, Tokay grapes, Florida citrus and Colorado vegetables have provided for this technique as a means of regulation.

Surplus, reserve or diversion pools are authorized for use in the walnut industry and in two potato deals. Sales in primary channels are limited to a stated percentage of total industry supply. Usually there is a requirement to set aside a specific percentage of merchantable output. Cooperatives have maintained similar pools and other industries have used this device under state programs. Each shipper is allowed to move an equal percentage of his merchantable production into primary channels.

Price posting requires shippers to sell only at published schedules which may be periodically revised. These prevent precipitous price breaks but may be posted too high and slow down trade as a result. Only the Washington-Oregon fresh prune program authorizes use of this device.

Volume limitation is used for products that hold well and the supply of which is produced in one homogeneous area. Tentative allotments are made on pre-season crop estimates and are corrected after final post-harvest estimates of total crop are made.

Rate-of-flow control over volume regulates daily, weekly, or other short-time shipments. It need not involve seasonal limitations. Administration and adjustment of prorate bases are complex but it has worked well, especially when used continuously or at peak periods.

The Prorate Base.—In both volume limitation and regulation, equity is taken to mean the right for each shipper to move the same proportion of his total

merchantable supply into commerce over the entire season. Obtaining such equitable allotment is the most difficult phase of volume limitation and regulation. Two bases may be used. First, the shipper may be given the same percentage of total sales as he made over several past seasons. Second, he may be given the same percentage of total sales as his merchantable supply bears to the total merchantable supply available for current shipment. This may mean percentage of total tree crop as in California oranges, of storage holdings as in lemons or various other definitions of current available supply. The past performance base does not adjust readily for changing conditions and no program now uses it. Changes in the allotment basis and the reasons for them must be reported to the Secretary.

Operation of Programs.--Grade and size programs are used by far the most frequently. They are inexpensive to operate. They do not require precise advance crop estimates. Equity problems are not troublesome except where wide regional or individual differences in grade or size exist. Limitation of shipments to particular grades and sizes prevents losses on the prohibited grades and spoiling markets for the grades and sizes which are not regulated. Federal-state inspection is usually used, with United States grades and standards. Grade-size prohibitions are not used as a means of limiting volume within a season since shipment cannot be equitably allotted except when the grade-size requirements are announced in advance and made applicable to the whole season. Provision that shippers may move specified percentages of total crop in various grade-size classes is also avoided because of difficulties in keeping records and in enforcement. Most programs provide for special consideration to regions or persons upon whom greater-than-average elimination is imposed. Thus, all shippers may move at least the average percentage of merchantable production.

Expenses.--Handlers are liable to assessment for expenses found reasonable or likely to be incurred, in proportion to their respective volumes of business. Administrative committees may sue in their own names for collection. An annual budget showing expected volume, rate of assessment per package, estimated expenses and a justification of each item is submitted to the Secretary. Annual audits are required for all programs. Books, records and auditing procedures may be prescribed by the Department. Money may be spent only to administer programs. Excess funds are returned or credited to handlers.

Disclosure of Information.--Books and records must be kept and upon proper request made available to the Secretary to determine (1) whether the parity income goal is being achieved; (2) the extent to which the agreement or order is being carried out; and (3) the extent to which antitrust exemption is being abused. With carefully specified exceptions, such information must be kept confidential as a protection to the handler.

Enforcement.--There are three methods of enforcement: civil suits by the government for triple the value of overshipments and civil injunctions, neither of which is often used; fines of from $50 to $500 for each offense upon criminal conviction. The Secretary is given the general investigation powers of the Federal Trade Commission in enforcement. Handlers are protected by appeal to the Courts and by petition in good faith to the Secretary, during the pendency of which no action will be taken against them.

Getting an Order.--The industry may propose an agreement or order. Field representatives of the Fruit and Vegetable Branch of the Production and Marketing Administration will provide information and advice. The Assistant Administrator

past research. Second, he may be given the sum
able supply and ability for current equipment. This may mean procurement of total
time crop as in California oranges, of storage building as in lemons or walnuts
other conditions of current available supply. The buyer performance have done not
agent readily for changing conditions and no program now uses it. Objectives in the
allotment basis and the reasons for them must be reported to the Secretary.

of Programs.--Grade and size programs are used by only the most
frequently. They are inexpensive to operate. They do not require private advance
crop estimates. Quality problems are not troublesome except where weight regional
or individual differences in grade or size exist. Limitation of shipments to
particular grades and sizes prevents losses on the prohibited grades and shipments
markets for the grades and sizes which are not regulated. Injurious-to-the-trade
tion is usually used with United States grades and standards. Grade-and-size pro-
limitations are not used or a means of limiting volume within a season; such pro-
must cannot be equitably allotted except when the grade-size regulations are
announced in advance and made applicable to the whole season. Privision that
shipments may move in excess of total crop in marketing-size classes
is also avoided because of difficulties in keeping records and inspections;
lect programs provide for special compensation to persons upon whom
practicable-average ultimate-use is imposed. Thus, all shipments may not meet
the average percentage of merchantable production.

--Handlers are liable to assessment for expenses from responsible or
likely to be incurred, in proportion to their respective volumes of business.

budget showing expected volume, rate of assessment per package, anticipated expenses
and a justification of each item is submitted to the Secretary. Annual reports are
required for all programs. Books, records and auditing procedures must be pre-
scribed by the Department. Money may be spent only as administrator programs. Expenses
limit are reimbursed or credited to industry.

Coordination of Industry Activities.--Books and records must be kept and open
goal is being achieved; (2) the extent to which antitrust objectives may be
avoided out; and (3) the extent to which antitrust objectives may be
currently operating conditions, such information must be kept confidential as a
possession to the Secretary.

--There are three methods of enforcement: civil suits by the
for recent for civil penalties of not $500 for each offense upon criminal con-
viction is often used; fines of from $25 to $500 for each offense upon criminal con-
viction. The secretary is given the general investigating powers of the General Law
This Connection in enforcement. Violations are prosecuted by appeal to the Courts
and by petition in good faith to the Secretary, stating the particulars of cases to
action will be taken against them.

information will provide information and advice. The Agricultural Adjustment

receives written applications for hearings and copies of the proposed order or agreement. If he concludes that the program will benefit growers, he gives notice of hearings and specifies the issues to be considered, the areas and the handlers to be governed. All procedures are carefully set out in the Administrative Procedure Act of 1946 and in regulations of the Department. The rights of all interested persons are carefully safeguarded. The Assistant Administrator studies the certified transcript of the public hearings after time is allowed for filing written briefs. Any person may file exceptions to the order, which is then promulgated by the Secretary if in his judgment it will effectuate the declared policy of the Act. Ordinarily thirty days must pass after publication before orders become effective. These programs are initiated by growers and handlers, formed by growers and handlers, approved and administered by them for the welfare of the industry.

VI. SUMMARY

1. Only by acting together in marketing can growers of many specialty products protect themselves against the business cycle or irregularities in yields.

2. Because alert shippers tend all to react to the same market or holding conditions, central regulation may increase returns by assuring the best possible distribution among alternative markets, by preventing floods in major channels, and by preventing damage to other markets through overshipment by grade or size or in total, and by poor quality or packs.

3. Cooperative marketing and voluntary marketing agreements developed out of these same problems which are inherent in the physical characteristics of production, the size and organization of producing units and the unique marketing conditions which always face growers and handlers of fresh fruits and vegetables.

4. Marketing cooperatives were not intended as means to regulate or limit shipments and voluntary control will break down for two reasons: participants want to overship when price rises; nonparticipants benefit disproportionately.

5. The Agricultural Marketing Agreement Act makes it possible to limit or to regulate sales by the whole industry through programs initiated, formulated and administered by growers and handlers themselves.

6. Programs operate for the benefit of growers, but consumers and other groups are protected at all stages in their development and operation.

7. Voluntary programs have operated since before 1885. The small minority has been required by law to participate in programs approved by the large majority of growers and handlers since 1933. There are now twenty-five programs operating under federal law. Several states operate similar programs.

8. Final authority rests with the Secretary, but programs are directly administered by industry committees nominated by the industry.

9. Broad powers for regulation by volume, grade or size, maturity, pack, rate-of-flow, surplus-diversion, reserve or substandard pools, price posting and prohibition of unfair practices or methods are provided in the Act.

10. Neither limitation nor regulation should be used except where incomes are significantly below parity levels, where the programs authorized by the Act can raise prices or stabilize them, where growers and handlers approve the programs and where they are administered by competent men who recognize their potential dangers as well as their benefits.